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CLERK

B. Hamilton

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	No. P1300CR20081339
)	
Plaintiff,)	Div. 6
)	
vs.)	MOTION TO PRECLUDE
)	EVIDENCE OF LATE
STEVEN CARROLL DEMOCKER,)	SORENSEN LABORATORY
)	FORENSICS TESTING
Defendant.)	
)	
)	
)	

MOTION

Steven DeMocker, by and through counsel, hereby respectfully requests that the Court preclude the State from offering results from forensics testing that the State is only now requesting Sorenson Laboratory to perform, less than three months before Mr. DeMocker's death penalty trial. This motion is based on the State's repeated violations

1 of Rule 15.1 and this Court's orders, the Due Process Clause, the Confrontation Clause,
2 the Eighth Amendment and Arizona counterparts, Arizona Rules of Evidence, Arizona
3 Rules of Criminal Procedure and the following Memorandum of Points and Authorities.
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6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 On February 24, 2010, the State notified the defense that it previously sent nineteen
8 items to Sorensen Laboratory for forensic testing with less than three months to trial in a
9 death penalty case. (Attached.) This revelation comes on the heels of the disclosure of
10 over 23,000 pages and the further revelation that the State has not completed its
11 examination of at least four key computer hard drives, as well as multiple thumb drives,
12 CDs, DVDs, cameras, iPods and other computer forensics.

13 At a May 12, 2009 hearing, this Court set a State disclosure deadline of June 22,
14 2009, and reminded the State that both parties have a duty to investigate to determine if
15 evidence exists. The Court also noted that it would allow additional discovery beyond
16 this deadline for "good cause shown." (May 12, 2009 transcript page 16:10). At a
17 hearing on December 9, 2009, the Court ordered the State to provide the defense with
18 notice of what testing remained to be done with respect to 14 items of evidence.

19 The Court should preclude the State from offering evidence at trial of any further
20 disclosed forensic testing. The State has repeatedly defied the Court's December 9
21 Order with respect to this evidence, as well as, the Court's additional January 22, 2010
22 Order of the same substance. The Court ordered this information to be disclosed by
23 January 29, 2010. The State has never identified what testing was to be done of these
24 items. Even at a February 19 hearing addressing earlier motions to preclude evidence
25 based on the State's failure to comply with these orders, the State refused to comply by
26 identifying what the pending testing was.
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1 Now, the State has identified nineteen additional items that it sent to Sorenson
2 Laboratory. These items were sent to Sorenson on February 17, 2010. This was two
3 days **before** the hearing in this Court on February 19 where the State advised the Court
4 (in written documents and at oral argument) that it had only sent two items for
5 additional testing to DPS. The nineteen items sent to Sorenson were not disclosed to the
6 Court or the defense during the hearing on the 19th even though they had already been
7 sent. This is true even though the Court was considering the precise issue of the State's
8 disclosure of pending forensic testing at the hearing.

9 None of these nineteen items were recently discovered by the State. No good
10 cause for this late investigation has been offered, much less shown to excuse this late
11 disclosure. The State has already had these items examined and has not disclosed
12 (again contrary to the Court's orders) what testing is to be done with respect to each
13 item of evidence. The State should be prohibited from offering testimony based on the
14 results of any examination of these items given that it is only now retesting them, given
15 that these items have already been tested, given its late disclosure of the testing and
16 given its refusal to identify what testing is being performed in violation of the Court's
17 previous orders regarding disclosure of pending forensic testing.

18 Mr. DeMocker also has a pending motion to preclude testimony of DPS forensic
19 experts based on the State's failure to disclose 300 pages of audit reports and protocols
20 that are necessary to examine the thousands of DPS reports until after repeated requests;
21 the DPS lab's failure to comply with the DNA Advisory Board of Quality Assurance
22 Standards for Forensic DNA Testing Laboratories, Standard 14, requiring that labs
23 "shall maintain documentation for the corrective action," and the State's refusal to
24 comply with the Court's order requiring production of STR Frequency Tables. In
25 addition to precluding testimony regarding Sorenson Lab's further testing of these
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1 nineteen items, this Court should also preclude testimony from the State DPS experts
2 based on these repeated violations of Court orders and Rule 15.1.

3 An elevated level of due process applies both to the guilt and penalty phases of a
4 death penalty case. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).

5 The defense does not know what the State intends with the mountain of late
6 disclosure and unfinished testing that necessitates a violation of Mr. DeMocker's rights
7 to confrontation, due process, a fair trial and the particular requirements in a death
8 penalty case, but this Court should not permit either Mr. DeMocker or the community to
9 suffer the consequences of the State's multiple failures.

10 **CONCLUSION**

11 Defendant Steven DeMocker, by and through counsel, hereby requests that this
12 Court prohibit the State from offering testimony regarding Sorenson Lab's testing of
13 nineteen items as disclosed on February 24, 2010.

14 DATED this 25th day of February, 2010.

15
16
17 By: _____

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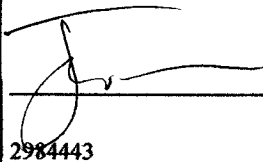
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2 **ORIGINAL** of the foregoing hand delivered for
3 filing this 25th day of February, 2010, with:

4 Jeanne Hicks
5 Clerk of the Court
6 Yavapai County Superior Court
7 120 S. Cortez
8 Prescott, AZ 86303

9 **COPIES** of the foregoing hand delivered this
10 this 25th day of February, 2010, to:

11 The Hon. Thomas B. Lindberg
12 Judge of the Superior Court
13 Division Six
14 120 S. Cortez
15 Prescott, AZ 86303

16 Joseph C. Butner, Esq.
17 Yavapai Courthouse Box

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Yavapai County Sheriff's Office
Master evidence property table

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EVIDENCE LIST:

Number	Incident	Item	Type	Stat	Description	Location
97451	08-029129	202	EIS	ACT	unknown substance fr	DEPUTY
97478	08-029129	600	EIS	ACT	5 fingernail clippin	DEPUTY
97481	08-029129	603	EIS	ACT	5 fingernail clippin	DEPUTY
97485	08-029129	607	EIS	ACT	addidas size 7 1/2 R	DEPUTY
97486	08-029129	608	EIS	ACT	addidas size 7 1/2 L	DEPUTY
97487	08-029129	609	EIS	ACT	pur shorts/blk liner	DEPUTY
97489	08-029129	611	EIS	ACT	2 swab from left han	DEPUTY
97495	08-029129	400	EIS	ACT	gary fisher mountain	DEPUTY
97503	08-029129	408	EIS	ACT	lg lithium 3.7 volt	DEPUTY
97521	08-029129	426	EIS	ACT	washing machine drai	DEPUTY
97542	08-029129	506	EIS	REL	gry desk trim w/redd	DEPUTY
97544	08-029129	507	EIS	ACT	e-tech telephone lan	DEPUTY
97588	08-029129	800	EIS	ACT	light bulb from laun	DEPUTY
97589	08-029129	801	EIS	ACT	light bulb from laun	DEPUTY
97591	08-029129	803	EIS	ACT	light bulb from laun	DEPUTY
97592	08-029129	804	EIS	ACT	dead bolt lock assem	DEPUTY
97630	08-029129	901	EIS	ACT	section of cut barbe	DEPUTY
97632	08-029129	903	EIS	ACT	ecosafe tall kitchen	DEPUTY
101934	08-029129	3500	EIS	ACT	big berth steelhead	DEPUTY
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to Lab 2.17.10
by Lt D. Rhodes